

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1245 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MEHBUBKHA ALIAS ALU ALIYARKHANPATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
Mr LR POOJARI, ADDL.GOVT PLEADER for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/03/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 16th February 1995 rendered by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), for short "the PASA Act". The petitioner could be committed under the impugned order of detention on 20th August 1996.

2. The grounds on which the impugned order of detention passed appear at Annexure : B to the petition. They inter alia indicate that the petitioner has been indulging in criminal and anti-social activities of threatening the witnesses, causing hurt with deadly weapon and extorting money from them and committing various offences under the Indian Penal Code resulting in fear in the mind of people. The Detaining Authority has placed reliance upon three offences of 1994 inter-alia under Sections 323, 324 and 392 of the I.P.C. read with Section 135 of the Bombay Police Act registered with Patan City Police Station, Patan. The particulars of such offences have been set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied upon. They speak about the incidents dated 23.1.1995 and 24.1.1995 indicating threatening the concerned witnesses, creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a dangerous person within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P. reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras : 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to

the facts before the Apex Court in Mustakmiya's case (supra).

6. In reply Mr.L.R.Poojari, learned A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi V/s. State of Maharashtra and anr., reported in AIR 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs.Harpreet Kaur's case (Supra) would not be applicable.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

8. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu Mehbubkhan alias Alu Aliyarkhan Pathan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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